IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. ~~26~~ 6

WILLIAM L. GRIFFIN, ET AL.,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF OF RESPONDENT

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OPINIONS BELOW

The opinion of the Court of Appeals of Maryland appears at R. 76-83 and is reported at 225 Md. 422, 171 A. 2d 717. The opinion of the Circuit Court for Montgomery County appears at R. 72-75, but is otherwise not reported.

Attention is also invited to *Griffin v. Collins*, 187 F. Supp. 149, a civil case arising out of substantially the same factual situation as is now before this Honorable Court.

JURISDICTION

The judgment of the Court of Appeals was entered on June 8, 1961. The Petition for Writ of Certiorari was granted on June 25, 1962. The jurisdiction of this Court rests upon 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether, consistent with the Fourteenth Amendment, the State of Maryland, under its general statute prohibiting trespass on private property, and acting on the complaint of the owner of a privately-owned and operated amusement park, may convict persons who enter upon such amusement park and who, after demand by the agent of the owner of such private facility, refuse to leave such amusement park?

STATUTES INVOLVED

The Petitioners were convicted of violating Chapter 66 of the Laws of Maryland of 1900, codified as Section 577 of Article 27 of the Annotated Code of Maryland (1957 Ed.), which provides:

> "Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor, and on conviction thereof before some justice of the peace in the county or city where such trespass may have been committed be fined by said justice of the peace not less than one, nor more than one hundred dollars, and shall stand committed to the jail of county or city until such fine and costs are paid; provided, however, that the person or persons so convicted shall have the right to appeal from the judgment of said justice of the peace to the circuit court for the county or Criminal Court of Baltimore where such trespass was committed, at any time within ten days after such judgment was rendered; and, provided, further, that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being

the intention of this section only to prohibit any wanton trespass upon the private land of others."[1]

The direction to Petitioners to leave the premises was issued on behalf of the owner by one of its agents, a uniformed guard in the employ of a private detective agency under contract to the private owner. The guard, Lieutenant Francis J. Collins, also held an appointment as a Special Deputy Sheriff under the provisions of Chapter 491 of the Laws of Maryland of 1939 (a Public Local Law relating solely to Montgomery County), codified as Section 2-91 of the Montgomery County Code (1955 Ed.), which reads as follows:

"The sheriff of the county, on application of any corporation or individual, may appoint special deputy sheriffs for duty in connection with the property of, or under the charge of, such corporation or individual; such special deputy sheriffs to be paid wholly by the corporation or person on whose account their appointments are made. Such special deputy sheriffs shall hold office at the pleasure of the sheriff and shall have the same power and authority as deputy sheriffs possess within the area to which they are appointed and in no other area."[2]

STATEMENT

The facts of the case were fairly and adequately summarized by the court below, as follows (R. 76-77):

"* * * William L. Griffin, Marvous Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwen-

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[1] This statute was amended by Chapter 616 of the Laws of Maryland of 1961 (effective June 1, 1961). The amendment eliminated "or city" following "county" in two places and eliminated "or Criminal Court of Baltimore" immediately preceding the words "where such trespass".

[2] The office of Sheriff in Maryland still carries with it the common law powers of a conservator of the peace. Deputy Sheriffs have such authority as the Sheriff himself could exercise. Hence, the powers of the "Special Deputy Sheriff" under this statute would appear to include the power of arrest. See *Turner v. Holtzman*, 54 Md. 148.

dolyn Greene (hereinafter called 'the Griffin appellants' or 'the Griffins') all of whom are Negroes, were arrested and charged with criminal trespass on June 30, 1960, on property owned by Rekab, Inc., and operated by Kebar, Inc., as the Glen Echo Amusement Park (Glen Echo or park).

"The Griffins were a part of a group of thirty-five to forty young colored students who gathered at the entrance to Glen Echo to protest 'the segregation policy that we thought might exist out there.' The students were equipped with signs indicating their disapproval of the admission policy of the park operator, and a picket line was formed to further implement the protest. After about an hour of picketing, the five Griffins left the larger group, entered the park and crossed over it to the carrousel. These appellants had tickets (previously purchased for them by a white person) which the park attendant refused to honor. At the time of this incident, Rekab and Kebar had a 'protection' contract with the National Detective Agency (agency), one of whose employees, Lt. Francis J. Collins (park officer), who is also a special deputy sheriff for Montgomery County, told the Griffins that they were not welcome in the park and asked them to leave. They refused, and after an interval during which the park officer conferred with Leonard Woronoff (park manager), the appellants were advised by the park officer that they were under arrest. They were taken to an office on the park grounds and then to Bethesda, where the trespass warrants were sworn out. At the time the arrests were made, the park officer had on the uniform of the agency, and he testified that he arrested the appellants under the established policy of Kebar of not allowing Negroes in the park. There was no testimony to indicate that any of the Griffins were disorderly in any manner, and it seems to be conceded that the park officer gave them ample time to heed the warning to leave the park had they wanted to do so."

Upon these facts, and after ruling that there was sufficient proof to establish the statutory elements of "due notice" and "wantonness," the court considered the remaining question advanced by Petitioners, viz, whether their arrest and conviction "constituted an unconstitutional exercise of state power to enforce racial segregation". (R. 81). In concluding that there was no such unconstitutional exercise of state power, and in affirming the judgments of conviction, the court below said (R. 81-82):

> "* * * It is true, of course, that the park officer — in addition to being an employee of the detective agency then under contract to protect and enforce, among other things, the lawful racial segregation policy of the operator of the amusement park — was also a special deputy sheriff, but that dual capacity did not alter his status as an agent or employee of the operator of the park. As a special deputy sheriff, though he was appointed by the county sheriff on the application of the operator of the park 'for duty in connection with the property' of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park. See Montgomery County Code (1955), §2-91. As we see it, our decision in *Drews v. State*, 224 Md. 186, 167 A. 2d 341 (1961), is controlling here. The appellants in that case — in the course of participating in a protest against the racial segregation policy of the owner of an amusement park — were arrested for disorderly conduct committed in the presence of regular Baltimore County police who had been called to eject them from the park. Under similar circumstances, the appellants in this case — in the progress of an invasion of another amusement park as a protest against the lawful segregation policy of the operator of the park — were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator)

after they had been duly notified to leave but refused to do so. It follows — since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, *The Law of Arrest in Maryland*, 5 Md. L. Rev. 125, 149)—the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence, as was done in the *Drews* case. As we see it, the arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State. The action in this case, as in *Drews*, was also "one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants."

SUMMARY OF ARGUMENT

The action inhibited by the Fourteenth Amendment is only such action as may fairly be said to be that of the states. The Amendment erects no shield against merely private conduct, however discriminatory or wrongful. Individual invasion of individual rights is not the subject matter of the Amendment. *Shelley v. Kraemer*, 334 U.S. 1, 13; *Civil Rights Cases*, 109 U.S. 3, 11.

A private property owner, such as the operator of a private amusement park, may, consistent with the Fourteenth Amendment, arbitrarily discriminate as to invitees. He has the right, even though he operates his private facility under license from the State, to select his clientele and to make such selection based on color, if he so desires. *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845

(4th Cir.); *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, *aff.* 284 F. 2d 746.

Individuals have no constitutional right to enter or remain upon private property contrary to the will of the owner. The private owner, on the other hand, is entitled to equal protection of law in maintaining his peaceful possession. This Court, in *Martin v. Struthers*, 319 U.S. 141, 147, referring to state criminal trespass laws, and making specific reference to the Maryland statute here involved, observed:

> "Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at least twenty states, while similar statutes of narrower scope are on the books of at least twelve states more . . ."

The State's general laws must be applied to all with equal force, regardless of their race, and violation thereof cannot be shielded from state action on account of race. *Bernstein v. Real Estate Commission of Maryland*, 221 Md. 221, app. dismissed 363 U.S. 419. The non-discriminatory application and enforcement of Maryland's criminal trespass law in the present case cannot be considered a type of state action proscribed by the Fourteenth Amendment, even though the private owner's sole reason for excluding negroes from the amusement park may have been because they were negroes. *Griffin v. Collins*, 187 F. Supp. 149. The Park's business policy of excluding negroes was neither induced, dictated, or required by any State or local law, policy or custom; nor was it in any way knowingly aided by any action that could fairly be said to be that of the State. Petitioners' arrest and conviction for criminal trespass was not due to or because the State of Maryland desired or intended to maintain this facility as a segregated

place of amusement. It was not only the right, but the duty of the State of Maryland, upon complaint being made to it by the private owner, to act thereon to protect and provide against unlawful entry. In so doing the State was merely allowing the use of its legal remedies as a substitute for force in a civilized community; it was not inducing others to discriminate, nor substituting its judgment for the judgment of the individual proprietor.[3]

ARGUMENT

Conviction of Petitioners under Maryland's General Statute Prohibiting Wanton Trespass on Private Property Did Not Contravene the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution.

I.

A Private Amusement Park, Though Licensed by the State, May Constitutionally Refuse Service to Negroes Solely Because of Their Race.

At common law, a person engaged in a public calling, such as inn-keeper or common carrier, was held to be under a duty to the general public and was obliged to serve, without discrimination, all who sought service. Equally well settled, on the other hand, is the proposition that operators of other private enterprises, including places of amusement, are under no such common law obligation; and, in the absence of a statute forbidding discrimination, may select their clientele based on color, if they so desire. *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Cir.); *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, aff. 284 F. 2d 746; *Griffin v. Collins*, 187

[3] The private owner abandoned its policy of not serving Negroes shortly after the conclusion of this case in the lower court. It should also be noted that subsequently thereto the Montgomery County Council enacted an equal accommodations law for Montgomery County. Ordinance 4-120, effective January 16, 1962.

F. Supp. 149; *Madden v. Queens County Jockey Club*, 72 N.E. 2d 697 (New York), cert. denied, 332 U.S. 761; *Terrell Wells Swimming Pool v. Rodriquez*, 182 S.W. 2d 824 (Texas); *Younger v. Judah*, 19 S.W. 1109 (Missouri); *Goff v. Savage*, 210 P. 374 (Washington); *De La Ysla v. Publix Theatres Corporation*, 26 P. 2d 818 (Utah); *Horn v. Illinois Central Railroad*, 64 N.E. 2d 574 (Illinois); *Coleman v. Middlestaff*, 305 P. 2d 1020 (California); *Fletcher v. Coney Island*, 136 N.E. 2d 344 (Ohio); *Alpaugh v. Wolverton*, 36 S.E. 2d 906 (Virginia); *Greenfeld v. Maryland Jockey Club*, 190 Md. 96; *Good Citizens Assoc. v. Board*, 217 Md. 129; and *Drews v. State*, 224 Md. 186; *Garfine v. Monmouth Park Jockey Club*, 148 A. 2d 1 (N.J.); and *State v. Clyburn*, 101 S.E. 2d 295 (N.C.).

This Court, in *Boynton v. Virginia*, 364 U.S. 454 clearly recognized the validity of the foregoing principles when it said that every time a bus stops at a wholly independent roadside restaurant, the Interstate Commerce Act does not require that restaurant service be supplied in harmony with the provisions of that Act. In fact, this Court has refused to hold that where a privately-owned restaurant is involved, in the absence of the general taxpaying public's ownership of the facility, or interstate commerce, that it will extend federal protection against racial discrimination on the basis of the Fourteenth Amendment. *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *Boynton v. Virginia*, *supra*. These recent pronouncements indicate reaffirmance of the long-established law that the owner of private property may be arbitrary and capricious in his choice of invitees, notwithstanding the Fourteenth Amendment; and that that Amendment "erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley v. Kraemer*, *supra*, at page 13. See also *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252.

It being established by the *Civil Rights Cases*, 109 U.S. 3 that the Congress is without power to legislate against such private discrimination as was involved in the present case, this Court cannot (without overruling its prior precedents) accomplish the same result by now holding that the Fourteenth Amendment created a new limitation on the use of private property as developed in the common law. The fact that the private amusement park was required to have a license from Montgomery County in order to operate does not, as contended by Petitioners, prohibit discrimination by the private owner in its use and enjoyment of the licensed facility; nor does the requirement of such license convert the private facility into a public one. *Williams v. Howard Johnson's Restaurant, supra; Slack v. Atlantic White Tower System, Inc., supra; Madden v. Queens County Jockey Club, Inc., supra; State v. Clyburn.* See also *Griffin v. Collins.*

II.

THE ARREST AND CONVICTION OF PETITIONERS DID NOT, UNDER THE PARTICULAR CIRCUMSTANCES OF THIS CASE, CONSTITUTE AN UNCONSTITUTIONAL EXERTION OF STATE POWER TO ENFORCE RACIAL SEGREGATION IN THE PRIVATE AMUSEMENT PARK.

Petitioners broadly contend that even if the private proprietor had a right to exclude them from the premises solely on account of their race, the State of Maryland crossed the line of forbidden conduct marked by the Fourteenth Amendment by arresting, prosecuting and convicting them under the criminal trespass statute. Virtually the same argument was advanced and rejected in *Griffin v. Collins, supra*, the court there holding:

> "Plaintiffs have cited no authority holding that in the ordinary case, where the proprietor of a store, restaurant or amusement park, himself or through his own

> employees, notifies the Negro of the policy and orders him to leave the premises, the calling in of a peace officer to enforce the proprietor's admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. *Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights.*" (Emphasis supplied.)

Though readily conceding that *State-imposed* racial segregation in the field of recreational activity is proscribed by the Fourteenth Amendment, it is the position of the State of Maryland that "state power" is not being coercibly, and hence unconstitutionally, applied to enforce and abet racial discrimination simply by its exercise to arrest, prosecute and convict under the circumstances of this case. We submit, rather, that the search for unconstitutional state action in this area must be made against the following background, as ably set forth by the United States in its brief *amicus curiae* in companion cases nos. 11, 58, 66, 67, and 71 (this term), at pages 42 and 45:

> ". . . a State cannot constitutionally prohibit association between Negroes and whites, be it in a public restaurant or elsewhere. On the other hand, to cite an example, if a private landowner should invite all of his neighbors to use his swimming pool at will and then request one of the invitees to leave because of his race, creed or color, the decision would be private and, however unpraiseworthy, not unconstitutional. Furthermore, we take it that there would be no denial of equal protection if the State made its police and legal remedies available to the owner of the swimming pool against any person who came or remained upon his property over his objection. *For, in a civilized community, where legal remedies have been substituted*

for force, private choice necessarily depends upon the support of sovereign sanctions. In such a case, the law would be color-blind and it could not be fairly said, we think, that the State had denied anyone the equal protections of its laws. (Emphasis supplied.)

* * * * * * *

"It is one thing for the State to enforce, through the laws of trespass, exclusionary practices which rest simply upon individual preference, caprice or prejudice. It is quite another for the State, exercising as it does immeasurable influence over individual behavior, to induce racial segregation and then proceed to implement the acts of exclusion which it has brought about. If the State, by its laws, actions, and policies, causes individual acts of discrimination in the conduct of a business open to the public at large, the same State, we believe, cannot be heard to say that it is merely enforcing, in even-handed fashion, the private and unfettered decisions of the citizen."

As otherwise stated in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722, private conduct abridging individual rights does no violence to the equal protection clause unless "to some significant extent" the State "in any of its manifestations" has become involved in it. This court there recognized that to fashion and apply a precise formula for recognition of State responsibility under the equal protection clause would be an "impossible task," and that only by "sifting facts" and "weighing circumstances" could the involvement of a State in private discriminatory conduct, if such existed, be attributed its true significance.

It is not seriously contended that the discriminatory practices of the amusement park were performed in obedience to any positive provision of state law, or induced, required or dictated by any state policy or custom. On the contrary, all of the evidence in the case indicated that the

practice of segregation in the Park was *solely* the result of the business choice of the private proprietor, catering to the desires and prejudices of his customers. See *Slack v. Atlantic White Tower System, Inc., supra*. We submit, therefore, that the only real issue for decision (and so recognized by the United States in its brief *amicus curiae* filed in this proceeding) is whether the arrest of the Petitioners by Lieutenant Collins, in response to the request of the private amusement park for assistance in enforcing its policy of excluding negroes, constituted state action in violation of the Fourteenth Amendment.

The court below found as a fact from the evidence that Lieutenant Collins was not executing any State authority by virtue of his status as a special deputy sheriff, but was acting solely as the agent of the private property owner in directing petitioners to leave the private amusement park premises. It is nevertheless urged upon this Court on behalf of Petitioners that Collins necessarily acted in his capacity as special deputy sheriff in making the arrests, seemingly reasoning that such must have been so because (a) he was specially appointed a special deputy sheriff upon application of the park management, (b) he was paid by the park, (c) he was in uniform and wearing his state badge at the time he made the arrests, and (d) the application for warrants which he executed after the arrests were on a form entitled "Application for Warrant by Police Officer." We submit that these conclusions are both misleading and inaccurate. Collins was an employee of the National Detective Agency, a private organization incorporated under the laws of the District of Columbia and authorized to provide guard service to its clients. He had been assigned under the guard contract between his employer and the amusement park to be the senior guard

with the title of Lieutenant. That Collins deemed his employer to be the Detective Agency, and not the State of Maryland, or the Park, is abundantly plain from a review of the record. It is equally plain that there is nothing in the evidence to indicate that Collins was engaged at the Park for any reason other than to maintain peace or protect property from damage or theft; and particularly there is nothing in the record to support even a weak inference that he was hired by the amusement park for the sole purpose of excluding Negroes. The only testimony concerning Collins' status as a Special Deputy Sheriff consists solely in the statement, volunteered by Collins, that "I am a Special Deputy Sheriff of Montgomery County, State of Maryland" (R. 14). The record does not disclose upon whose application Collins was deputized. Consistent with the provisions of the statute it could have been at his own request, or at the request of his employer, National Detective Agency, or at the request of the Park management. That Collins was not paid by the Park, but was paid solely by his employer, National Detective Agency, is certain (R. 14). Collins received no pay from the Park or from anyone else for being special deputy sheriff (R. 15). Collins wore the white-coat uniform of the National Detective Agency (and not a uniform of the State of Maryland), and his only indicia of State authority was that he wore, presumably on his uniform, his deputy badge; although there is absolutely nothing in the record to indicate that the Petitioners observed the badge, or knew that Collins was a special deputy sheriff when he arrested them. It is to be noted that Collins, in effecting the arrests, pursued the same procedures as any ordinary citizen in obtaining an arrest warrant from a magistrate, thus indicating that Collins was not exercising the powers of special

deputy sheriff vested in him.[4] Nor does the mere fact that Collins was given an application for warrant entitled "Application for Warrant by Police Officer" convert otherwise private actions into those of a public official. We submit that on a fair review of the record the only rational conclusion to be drawn is that Lieutenant Collins was not executing any State authority on behalf of the private owner's policy of racial discrimination.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgments of conviction should be affirmed.

Respectfully submitted,

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[4] Maryland confers on its peace officers the right to arrest without warrant for any misdemeanor committed in the officer's presence, but confines private persons in similar cases to misdemeanors amounting to a breach of the peace. *B. & O. Railroad Co. v. Cain*, 81 Md. 87. Private Detective agencies have no police authority whatsoever under Maryland law. See Sections 75-92 of Article 56, Annotated Code of Maryland (1957 Ed.) regulating the business of private detective agencies.